

# SENATE BILL No. 1200

November 27, 2018, Introduced by Senators BIEDA, CONYERS, HERTEL and YOUNG and referred to the Committee on Judiciary.

A bill to amend 1965 PA 213, entitled

"An act to provide for setting aside the conviction in certain criminal cases; to provide for the effect of such action; to provide for the retention of certain nonpublic records and their use; to prescribe the powers and duties of certain public agencies and officers; and to prescribe penalties,"

by amending section 1 (MCL 780.621), as amended by 2016 PA 336.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. (1) Except as provided in this section, a person who  
2 is convicted of not more than 1 offense may file an application  
3 with the convicting court for the entry of an order setting aside 1  
4 or more convictions as follows:

5           (a) A person who is convicted of not more than 1 felony  
6 offense and not more than 2 misdemeanor offenses may petition the

1 convicting court to set aside the felony offense.

2 (b) Except as provided in subdivision (c), a person who is  
3 convicted of not more than 2 misdemeanor offenses and no other  
4 felony or misdemeanor offenses may petition the convicting court or  
5 the convicting courts to set aside 1 or both of the misdemeanor  
6 convictions.

7 (c) A person who is convicted of a violation or an attempted  
8 violation of section 520e of the Michigan penal code, 1931 PA 328,  
9 MCL 750.520e, before January 12, 2015 may petition the convicting  
10 court to set aside the conviction if the individual has not been  
11 convicted of another offense other than not more than 2 minor  
12 offenses. As used in this subdivision, "minor offense" means a  
13 misdemeanor or ordinance violation to which all of the following  
14 apply:

15 (i) The maximum permissible term of imprisonment does not  
16 exceed 90 days.

17 (ii) The maximum permissible fine is not more than \$1,000.00.

18 (iii) The person who committed the offense is not more than 21  
19 years old.

20 (2) A conviction that was deferred and dismissed under any of  
21 the following, whether a misdemeanor or a felony, ~~shall~~**MUST** be  
22 considered a misdemeanor conviction under subsection (1) for  
23 purposes of determining whether a person is eligible to have any  
24 conviction set aside under this act:

25 (a) Section 703 of the Michigan liquor control code of 1998,  
26 1998 PA 58, MCL 436.1703.

27 (b) Section 1070(1)(b)(i) or 1209 of the revised judicature

1 act of 1961, 1961 PA 236, MCL 600.1070 and 600.1209.

2 (c) Section 13 of chapter II or section 4a of chapter IX of  
3 the code of criminal procedure, 1927 PA 175, MCL 762.13 and 769.4a.

4 (d) Section 7411 of the public health code, 1978 PA 368, MCL  
5 333.7411.

6 (e) Section 350a or 430 of the Michigan penal code, 1931 PA  
7 328, MCL 750.350a and 750.430.

8 (f) Any other law or laws of this state or of a political  
9 subdivision of this state similar in nature and applicability to  
10 those listed in this subsection that provide for the deferral and  
11 dismissal of a felony or misdemeanor charge.

12 (3) A person shall not apply to have set aside, and a judge  
13 shall not set aside, a conviction for any of the following:

14 (a) A felony for which the maximum punishment is life  
15 imprisonment or an attempt to commit a felony for which the maximum  
16 punishment is life imprisonment.

17 (b) A violation or attempted violation of section 136b(3),  
18 136d(1)(b) or (c), 145c, 145d, 520c, 520d, or 520g of the Michigan  
19 penal code, 1931 PA 328, MCL 750.136b, 750.136d, 750.145c,  
20 750.145d, 750.520c, 750.520d, and 750.520g.

21 (c) A violation or attempted violation of section 520e of the  
22 Michigan penal code, 1931 PA 328, MCL 750.520e, if the conviction  
23 occurred on or after January 12, 2015.

24 (d) A traffic offense, including, but not limited to, a  
25 conviction for operating while intoxicated.

26 (e) A felony conviction for domestic violence, if the person  
27 has a previous misdemeanor conviction for domestic violence.

1 (f) A violation of former section 462i or 462j or chapter  
2 LXVIIIA or chapter LXXXVIII-A of the Michigan penal code, 1938 PA  
3 321, MCL 750.462a to 750.462h and 750.543a to 750.543z.

4 (4) A person who is convicted of a violation of section 448,  
5 449, or 450 of the Michigan penal code, 1931 PA 328, MCL 750.448,  
6 750.449, and 750.450, or a local ordinance substantially  
7 corresponding to section 448, 449, or 450 of the Michigan penal  
8 code, 1931 PA 328, MCL 750.448, 750.449, and 750.450, may apply to  
9 have that conviction set aside if he or she committed the offense  
10 as a direct result of his or her being a victim of a human  
11 trafficking violation.

12 (5) An application under subsection (1) ~~shall~~**MUST** only be  
13 filed 5 or more years after whichever of the following events  
14 occurs last:

15 (a) Imposition of the sentence for the conviction that the  
16 applicant seeks to set aside.

17 (b) Completion of probation imposed for the conviction that  
18 the applicant seeks to set aside.

19 (c) Discharge from parole imposed for the conviction that the  
20 applicant seeks to set aside.

21 (d) Completion of any term of imprisonment imposed for the  
22 conviction that the applicant seeks to set aside.

23 (6) If a petition under this act is denied by the convicting  
24 court, a person shall not file another petition concerning the same  
25 conviction or convictions with the convicting court until 3 years  
26 after the date the convicting court denies the previous petition,  
27 unless the court specifies an earlier date for filing another

1 petition in the order denying the petition.

2 (7) An application under subsection (4) may be filed at any  
3 time following the date of the conviction to be set aside. A person  
4 may apply to have more than 1 conviction set aside under subsection  
5 (4).

6 (8) An application under this section is invalid unless it  
7 contains the following information and is signed under oath by the  
8 person whose conviction is or convictions are to be set aside:

9 (a) The full name and current address of the applicant.

10 (b) A certified record of each conviction that is to be set  
11 aside.

12 (c) For an application under subsection (1), a statement that  
13 the applicant has not been convicted of an offense other than the  
14 conviction or convictions sought to be set aside as a result of  
15 this application and any nondisqualifying misdemeanor convictions  
16 described in subsection (1)(a).

17 (d) A statement listing all actions enumerated in subsection  
18 (2) that were initiated against the applicant and have been  
19 dismissed.

20 (e) A statement as to whether the applicant has previously  
21 filed an application to set aside this or other conviction and, if  
22 so, the disposition of the application.

23 (f) A statement as to whether the applicant has any other  
24 criminal charge pending against him or her in any court in the  
25 United States or in any other country.

26 (g) If the person is seeking to have 1 or more convictions set  
27 aside under subsection (4), a statement that he or she meets the

1 criteria set forth in subsection (4), together with a statement of  
2 the facts supporting his or her contention that the conviction was  
3 a direct result of his or her being a victim of human trafficking.

4 (h) A consent to the use of the nonpublic record created under  
5 section 3 to the extent authorized by section 3.

6 (9) The applicant shall submit a copy of the application and 1  
7 complete set of fingerprints to the department of state police. The  
8 department of state police shall compare those fingerprints with  
9 the records of the department, including the nonpublic record  
10 created under section 3, and shall forward an electronic copy of a  
11 complete set of fingerprints to the Federal Bureau of Investigation  
12 for a comparison with the records available to that agency. The  
13 department of state police shall report to the court in which the  
14 application is filed the information contained in the department's  
15 records with respect to any pending charges against the applicant,  
16 any record of conviction of the applicant, and the setting aside of  
17 any conviction of the applicant and shall report to the court any  
18 similar information obtained from the Federal Bureau of  
19 Investigation. The court shall not act upon the application until  
20 the department of state police reports the information required by  
21 this subsection to the court.

22 (10) The copy of the application submitted to the department  
23 of state police under subsection (9) ~~shall~~**MUST** be accompanied by a  
24 fee of \$50.00 payable to the state of Michigan that ~~shall~~**MUST** be  
25 used by the department of state police to defray the expenses  
26 incurred in processing the application.

27 (11) A copy of the application ~~shall~~**MUST** be served upon the

1 attorney general and upon the office of each prosecuting attorney  
2 who prosecuted the crime or crimes the applicant seeks to set  
3 aside, and an opportunity ~~shall~~**MUST** be given to the attorney  
4 general and to the prosecuting attorney to contest the application.  
5 If a conviction was for an assaultive crime or a serious  
6 misdemeanor, the prosecuting attorney shall notify the victim of  
7 the assaultive crime or serious misdemeanor of the application  
8 under section 22a or 77a of the William Van Regenmorter crime  
9 victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The  
10 notice ~~shall~~**MUST** be by first-class mail to the victim's last known  
11 address. The victim has the right to appear at any proceeding under  
12 this act concerning that conviction and to make a written or oral  
13 statement.

14 (12) For an application under subsection (1), upon the hearing  
15 of the application the court may require the filing of affidavits  
16 and the taking of proofs as it considers proper.

17 (13) For an application under subsection (4), if the applicant  
18 proves to the court by a preponderance of the evidence that the  
19 conviction was a direct result of his or her being a victim of  
20 human trafficking, the court may, subject to the requirements of  
21 subsection (14), enter an order setting aside the conviction.

22 (14) If the court determines that the circumstances and  
23 behavior of an applicant under subsection (1) or (4), from the date  
24 of the applicant's conviction or convictions to the filing of the  
25 application warrant setting aside the conviction or convictions,  
26 and that setting aside the conviction or convictions is consistent  
27 with the public welfare, the court may enter an order setting aside

1 the conviction or convictions.

2 (15) The setting aside of a conviction or convictions under  
3 this act is a privilege and conditional and is not a right.

4 (16) SUBJECT TO SUBSECTION (18), A PERSON WHO WAS CONVICTED OF  
5 1 OR MORE OFFENSES IN VIOLATION OF SECTION 7403(2)(D) OF THE PUBLIC  
6 HEALTH CODE, 1978 PA 368, MCL 333.7403, AND WHO OTHERWISE COMPLIES  
7 WITH THE REQUIREMENTS FOR MAKING AN APPLICATION UNDER SUBSECTION  
8 (1) MAY MAKE AN APPLICATION UNDER THIS SUBSECTION TO HAVE THOSE  
9 OFFENSES SET ASIDE.

10 (17) SUBJECT TO SUBSECTION (18), THE COURT SHALL GRANT AN  
11 APPLICATION MADE UNDER SUBSECTION (16) IF THE APPLICATION IS FOR 1  
12 OR MORE OFFENSES IN VIOLATION OF SECTION 7403(2)(D) OF THE PUBLIC  
13 HEALTH CODE, 1978 PA 368, MCL 333.7403.

14 (18) SUBSECTIONS (16) AND (17) DO NOT APPLY IF THE MICHIGAN  
15 REGULATION AND TAXATION OF MARIHUANA ACT IS NOT APPROVED BY A  
16 MAJORITY OF THE QUALIFIED ELECTORS OF THIS STATE VOTING ON THE  
17 QUESTION AT AN ELECTION TO BE HELD ON THE NOVEMBER REGULAR ELECTION  
18 DATE IN 2018.

19 (19) ~~(16)~~As used in this section:

20 (a) "Assaultive crime" means that term as defined in section  
21 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL  
22 770.9a.

23 (b) "Domestic violence" means that term as defined in section  
24 1 of 1978 PA 389, MCL 400.1501.

25 (c) "Felony" means either of the following, as applicable:

26 (i) For purposes of the offense to be set aside, felony means  
27 a violation of a penal law of this state that is punishable by



1 imprisonment for more than 1 year or that is designated by law to  
2 be a felony.

3 (ii) For purposes of identifying a prior offense, felony means  
4 a violation of a penal law of this state, of another state, or of  
5 the United States that is punishable by imprisonment for more than  
6 1 year or is designated by law to be a felony.

7 (d) "Human trafficking violation" means a violation of chapter  
8 LXVIIIA of the Michigan penal code, 1931 PA 328, MCL 750.462a to  
9 750.462h.

10 (e) "Indian tribe" means an Indian tribe, Indian band, or  
11 Alaskan native village that is recognized by federal law or  
12 formally acknowledged by a state.

13 (f) "Misdemeanor" means a violation of any of the following:

14 (i) A penal law of this state, another state, an Indian tribe,  
15 or the United States that is not a felony.

16 (ii) An order, rule, or regulation of a state agency that is  
17 punishable by imprisonment for not more than 1 year or a fine that  
18 is not a civil fine, or both.

19 (iii) A local ordinance of a political subdivision of this  
20 state substantially corresponding to a crime listed in subparagraph  
21 (i) or (ii) that is not a felony.

22 (iv) A violation of the law of another state or political  
23 subdivision of another state substantially corresponding to a crime  
24 listed under subparagraph (i) or (ii) that is not a felony.

25 (v) A violation of the law of the United States substantially  
26 corresponding to a crime listed under subparagraph (i) or (ii) that  
27 is not a felony.

1 (g) "Operating while intoxicated" means a violation of any of  
2 the following:

3 (i) Section 625 or 625m of the Michigan vehicle code, 1949 PA  
4 300, MCL 257.625 and 257.625m.

5 (ii) A local ordinance substantially corresponding to a  
6 violation listed in subparagraph (i).

7 (iii) A law of an Indian tribe substantially corresponding to  
8 a violation listed in subparagraph (i).

9 (iv) A law of another state substantially corresponding to a  
10 violation listed in subparagraph (i).

11 (v) A law of the United States substantially corresponding to  
12 a violation listed in subparagraph (i).

13 (h) "Serious misdemeanor" means that term as defined in  
14 section 61 of the William Van Regenmorter crime victim's rights  
15 act, 1985 PA 87, MCL 780.811.

16 (i) "Victim" means that term as defined in sections 2, 31, and  
17 61 of the William Van Regenmorter crime victim's rights act, 1985  
18 PA 87, MCL 780.752, 780.781, and 780.811.

19 Enacting section 1. This amendatory act takes effect 90 days  
20 after the date it is enacted into law.